IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 805 OF 1998

Smt.Asha Yogesh Kanakia & ors. ... Appellants.
Versus.
Goodluck Industries & Trading Co. and others. ... Respondents.

The Appellant No.1 present in person.

CORAM : ABHAY S. OKA, J.

DATED : 7th February, 2005.

P.C.:

1. I have heard the Appellant No.1 appearing in person.

2. The appeal is by the original Plaintiffs for challenging the Judgment and Order dated 5th May 1997 passed by the learned trial Judge by which Notice of Motion No.7167 of 1995 and Notice of Motion No.205 of 1996 have been disposed of.

3. Notice of Motion No.205 of 1996 is filed by the Appellants praying for appointment of two authorised Chartered Accountants to inspect and investigate the various entries in the accounts submitted by the Defendants. A prayer is also made for appointment of the Court Receiver. In so far as Notice of Motion No.7167 of 1995 is concerned, the prayer is for taking action against the Respondents for wilfully committing

breach of the order dated 11th March 1993. By the impugned order the learned trial Judge has granted prayer clause (e) of the Notice of Motion No.205 of 1996 and has disposed of the Notice of Motion No.7167 of 1995 without passing any order.

4. The Appellant No.1 appearing in person has relied upon the order dated 11th July 1991 passed in Notice of Motion No.4107 of 1991 and submitted that the accounts which are filed in compliance with order dated 11th July 1991 are fabricated and number of entries in the accounts are doubtful. She submitted that from the year 1998 the Respondents have stopped submitting the accounts and have not complied with the order dated 11th July 1991. She made a grievance that in view of the changed circumstances the order for appointment of the Receiver ought to have been passed. She submitted that there is no compliance made by the Respondents of the relief granted in terms of prayer clause (e) of Notice of Motion No.205 of 1996.

5. In so far as Notice of Motion No.7167 of 1995 is concerned, the learned trial Judge has disposed of the same without passing any order thereon. From the prayers made in the said Notice of Motion, it is obvious that the same was filed for invoking powers under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908. In view of the Sub-Rule (r) of Rule 1 Order XLIII of the

said Code, as amended by this Court on 1st October 1983, the Appeal from Order is not maintainable against the order passed on Notice of Motion No.7167 of 1995. Therefore, the Appeal in so far as the said order passed in Notice of Motion No.7167 of 1995 is not maintainable.

6. In the Notice of Motion No.4107 of 1991 prayers made were of temporary injunction as well as appointment of the Court Receiver. By a reasoned order dated 11th July 1991, the learned trial Judge declined to appoint the Court Receiver and passed order directing the Respondents to submit accounts. The Appellant No.1 appearing in person has stated that till the year 1998 in compliance with the said order dated 11th July 1991, the Respondents have submitted accounts. However, she is disputing the correctness and genuineness of entries in the account. After having perused the affidavit-in-support of Notice of Motion No.205 of 1996, I find that atleast in respect of the accounts which are filed upto the date passing of the impugned order, primafacie, there is no substance in the allegation of the Appellant No.1 appearing in person. It is needless to say that since the suit is pending, the accounts are bound to be examined at appropriate stage and the parties can also lead evidence about the entries made in the accounts.

7. According to the Appellant No.1 appearing in person,

there is a drastic change of circumstance after the impugned order dated 5th May 1997 is passed by the trial Court. On this ground appointment of Court Receiver cannot be made. As of that date, the learned trial Judge adequately protected the Appellants by granting prayer clause (e). Therefore, if there is any alleged change of circumstance after 5th May 1997, it is for the Appellants to take out appropriate proceedings in that behalf. In case the Respondents have not complied with the order dated 11th July 1991 and the impugned order dated 5th May 1997, the Appellants can always take out appropriate proceedings and no order can be passed in this Appeal in so far as the said grievance is concerned.

8. In view of the above position, I pass the following order:

(i) The Appeal from Order in so far as the challenge to the order passed in Notice of Motion No.7167 of 1995 is concerned is not maintainable and is dismissed.

(ii) The challenge to the order passed in Notice of Motion No.205 of 1996 has no merit and therefore, the Appeal is dismissed.

(iii) Notwithstanding the dismissal of the

Appeal, it will be open for the Appellants to take out appropriate proceedings for appropriate relief in the light of the observations made in this Judgment.

(iv) All questions on merits in the petition suit are kept open.

(v) Parties to act on an authenticated copy of this order.

Judge.